

**SIERRA MOUNTAIN EQUIPMENT RENTAL,**

Appellant

**Appearing for the Appellant:**

Herman C. Meyer, Esquire  
214 East "F" Street, Suite 203  
Oakdale, California 95361

Doug Benton  
Sierra Mountain Investments  
P. O. Box 908  
Tuolumne, California 95379

**Appearing for the Government:**

Elin M. Dugan, Esquire  
Office of the General Counsel  
U. S. Department of Agriculture  
33 New Montgomery Street, 17<sup>th</sup> Floor  
San Francisco, California 94105-4511

**AGBCA Nos. 2004-106-1  
2004-107-1**

**DECISION OF THE BOARD OF CONTRACT APPEALS**

**September 7, 2004**

**Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.**

**Opinion for the Board by Administrative Judge POLLACK.**

This appeal arises out of Emergency Equipment Rental Agreement No. 56-9A23-02-MC-37, McNally Fire, Region 5, Sequoia National Forest, California. Appellant filed its notice of appeal by letter dated November 19, 2003, to a final decision issued by the Contracting Officer (CO) dated October 20, 2003. The initial claim involved three separate items. In filing its appeal, the Appellant sought reimbursement for two of the three items. The appeal dealt with reimbursement for a fuel trailer at \$48,175; and a pickup, outfitted with temporary fuel tanks, at \$48,551. In his decision, the CO allowed a portion of the pickup claim but denied the trailer claim in full. The

third item, involving fuel, was not part of the appeal and apparently was satisfactorily resolved by the amount allowed in the final decision.

The Board has jurisdiction over the timely-filed appeals pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613, as amended (CDA).

The appeal was assigned to Judge Westbrook, who initially processed the matter. In a telephone conference of April 28, 2004, the parties and Board discussed the use of alternative dispute resolution and agreed that mediation would be held and conducted by another Board judge. If that mediation failed, then Judge Westbrook would retain the case for formal disposition.

In accordance with the agreement of the parties, mediation was scheduled in Sacramento, California, for July 22, 2004. On that date, the Board met with Ms. Dugan, counsel for the FS, and with Mr. Benton, principal of Sierra, and with Sierra's counsel, Mr. Herman Meyer. The CO was unable to attend. Arrangements were made for the Board to continue the mediation by telephone with the CO and FS counsel and then get back to Appellant for further discussions. A telephone conference was thereafter held by the Board with Ms. Dugan, the CO and with Mr. Doug Lee, Director of Acquisitions. At the close of that conference, the Board advised the FS representatives that it would again contact Appellant and continue the shuttling between the parties. The Board then proceeded to contact counsel for Appellant, who initially was unavailable.

On August 31, 2004, after not having heard from Appellant's counsel, the Board contacted both Mr. Benton and Ms. Dugan. The Board was advised that in the interim period, the parties had reached a settlement of all remaining issues.

On that same day, Ms. Dugan filed a letter with the Board confirming that the parties had settled the appeals. She also attached a document dated August 25, 2004, in which the CO set out the FS's offer of settlement in the matter and which also contained an agreement by Mr. Benton to settle. The agreement by Mr. Benton provided that in consideration for the agreed payment, he agreed to release the Government of any and all claims arising out of the subject Emergency Rental Agreement on the McNally Fire.

**DECISION**

The parties have settled the appeals. Accordingly, the appeals are dismissed with prejudice.

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**HOWARD A. POLLACK**  
Administrative Judge

**Concurring:**

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**JOSEPH A. VERGILIO**  
Administrative Judge

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**ANNE W. WESTBROOK**  
Administrative Judge

**Issued at Washington, D.C.**  
**September 7, 2004**